

1 J. MICHAEL KEYES (State Bar No. 262281)
2 mike.keyes@klgates.com
3 RACHEL DAVIDSON (State Bar No. 215517)
4 Rachel.davidson@klgates.com
5 K&L GATES LLP
6 Four Embarcadero Center, #1200
7 San Francisco, California 94111
8 Telephone: 415-882-8200
9 Facsimile: 415-882-8220

10 Attorneys for Plaintiff
11 Del Monte Fresh Produce, N.A., Inc.

12 **IN THE UNITED STATES DISTRICT COURT**
13 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

14 DEL MONTE FRESH PRODUCE, N.A.,
15 INC.,

16 v.

17 KIPARISSI CORPORATION, d/b/a/ "DEL
18 MONTE PRODUCE"; DIMITRIES
19 TSIGARIS, an individual, JOHN DOES
NOS. 1-10,

Defendants.

Case No. CV-11-00682 SI

**STIPULATION TO FINAL
JUDGMENT AND PERMANENT
INJUNCTION AGAINST
DIMITRIES TSIGARIS**

20 Plaintiff Del Monte Fresh Produce, N.A., Inc. and Defendant Dimitries Tsigaris hereby
21 stipulate to the facts and conclusions contained in the attached Final Judgment and Permanent
22 Injunction and consent to its entry by this Court.

23 DATED: June 16, 2011 Respectfully submitted,

24 By: /s Susan Bishop
25 Susan Bishop
26 Attorney for Defendant Dimitries Tsigaris

27 DATED: June 16, 2011 K&L GATES LLP

28 By: /s J. Michael Keyes
J. Michael Keyes
29 Attorney for Plaintiff Del Monte Fresh Produce,
N.A., Inc.

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Atorneys for Plaintiff
Del Monte Fresh Produce, N.A., Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

DEL MONTE FRESH PRODUCE, N.A.,
INC.,

Case No. CV-11-00682 SI

V

Plaintiff:

**[PROPOSED] FINAL
JUDGMENT AND PERMANENT
INJUNCTION**

KIPARISSI CORPORATION, d/b/a/ "DEL MONTE PRODUCE"; DIMITRIES TSIGARIS, an individual, JOHN DOES NOS. 1-10.

Defendants.

Plaintiff Del Monte Fresh Produce, N.A., Inc. (“Del Monte Fresh Produce”) filed a Complaint alleging trademark infringement and unfair competition under California and federal law against Defendant Dimitries Tsigaris (“Tsigaris”) and other parties. Del Monte Fresh Produce alleges that Tsigaris infringed its trademarks in the operation of “Del Monte Produce”, a business selling fresh fruit and vegetables. Tsigaris does not admit to these allegations, but consents to entry of this Final Judgment and Permanent Injunction to resolve this matter expeditiously.

The Court now enters this Final Judgment and Permanent Injunction based on the following facts. Each party has waived the right to appeal from this Final Judgment and Permanent Injunction and each party will bear its own fees and costs in connection with this action.

1 **I. STIPULATED FACTS AND CONCLUSIONS**

2 A. This Court has subject matter jurisdiction over this lawsuit and personal
3 jurisdiction over Tsigaris. Venue is proper in this Court.

4 B. Del Monte Fresh Produce is the exclusive U.S. licensee of several valid,
5 federally-registered “Del Monte” trademarks for use in conjunction with fresh fruits and
6 vegetables (the “Licensed Marks”), including:

7 1. “Del Monte,” U.S. Registration No. 881,339;
8 2. “Del Monte Gold,” U.S. Registration No. 2,754,865;
9 3. “Del Monte Quality,” U.S. Registration No. 2,581,586; and
10 4. “Del Monte Gold Del Monte Quality,” U.S. Registration No. 2,287,404.

11 C. Tsigaris has operated and currently operates a business d/b/a “Del Monte
12 Produce,” located at 2400 Del Monte Way, Monterey, CA, 93940 (the physical location
13 hereinafter referred to as “the Property”), wherein he sells fresh fruit and vegetables (“Del Monte
14 Produce”).

15 D. Tsigaris hereby represents and warrants that he is not the owner, lessee, operator,
16 or user of two delivery trucks that contain the infringing name “Del Monte Produce” (the
17 “Infringing Trucks”) and that are physically located on the Property. On information and belief,
18 Watsonville Coast Produce, Inc. (the “Owner”) owns the Infringing Trucks. Despite Tsigaris’
19 requests that the Owner remove the Infringing Trucks from the Property, the Owner has not
20 removed the Infringing Trucks.

21 E. Tsigaris hereby represents that he currently maintains a federal Employer
22 Identification Number (“EIN”) under the name Dimitires Tsigaris “d/b/a/ Del Monte Produce.”
23 Tsigaris further represents and warrants that he does not use, and will not use in the future, the
24 “Del Monte Produce” name in any manner with respect to any business or administrative filings
25 with the federal, state and local authorities.

F. Tsigaris hereby represents and warrants that he currently maintains business checks with the name "Del Monte Produce" and that these are only used for bills that must be paid by a written check as opposed to an online, debit, or credit payment.

II. ORDER

It is hereby ordered and adjudged as follows:

A. Within sixty (60) days after this Court enters this Final Judgment and Permanent Injunction, Tsigaris and his agents, employees, servants, predecessors, successors, assigns, affiliates, and all persons acting in concert or participating with him who receive actual notice of this Final Judgment and Permanent Injunction, are hereby permanently enjoined and restrained, directly or indirectly, from doing, authorizing or procuring any persons to do the following:

1. Manufacturing, producing, sourcing, importing, selling, offering for sale, distributing, advertising or promoting any consumer products (including fresh fruits, fresh vegetables, and fresh produce) using the name “Del Monte” or any other words or symbols that so resemble the Licensed Marks as to be likely to cause consumers to believe that Tsigaris’ business is affiliated with, sponsored by, or is otherwise approved by Plaintiff. Specifically, Tsigaris shall cause the name “Del Monte Produce” to be removed from the building located at 2400 Del Monte Way, Monterey, CA 93940, and any business property therein or thereon, including but not limited to, delivery trucks, invoices, purchase orders and printed receipts;

2. Using or filing applications for the registration of trademarks, designs or other intellectual property that is substantially similar to the Licensed Marks;

3. Assisting, aiding or abetting any person or entity engaging in or performing any act prohibited by this paragraph (A).

4. Tsigaris shall continue to use his best efforts to contact the Owner of the Infringing Trucks and request that they be removed from the property. Tsigaris shall also promptly provide a copy of this Final Judgment and Permanent Injunction to the Owner of the Infringing Trucks.

1 5. Within sixty (60) days after this Court enters this Final Judgment and
2 Permanent Injunction, Tsigaris shall execute and file with the County of Monterey Clerk a
3 "Statement of Abandonment of Use of Fictitious Business Name" for the name "Del Monte
4 Produce."

5 6. Within 180 days after this Court enters this Final Judgment and Permanent
6 Injunction, Tsigaris will refrain from using the business checks referenced in Paragraph I. F.,
7 *supra*.

8 7. Notwithstanding the above, nothing in this Final Judgment and Permanent
9 Injunction will require Tsigaris to obtain a new EIN, so long as the use of the current EIN
10 conforms to the representations and uses set forth in Paragraph I.E., *supra*. Notwithstanding this
11 paragraph (7), to the extent any use of the current EIN causes any confusion, or causes mistake,
12 or deceives any person as to the affiliation, connection, or association of Tsigaris with Plaintiff,
13 or as to the origin, sponsorship or approval of his goods, services or commercial activities by
14 Plaintiff, then Plaintiff shall have the right to demand that Tsigaris cease and desist from any
15 further use of the current EIN and obtain a new one from the federal government without the
16 name "d/b/a Del Monte Produce."

17 B. Within seventy (70) days after this Court executes this Final Judgment and
18 Permanent Injunction, Tsigaris shall file with this Court and serve upon Plaintiff's counsel a
19 written report under oath setting forth in detail the manner in which Defendant has complied
20 with this Final Judgment and Permanent Injunction.

21 C. Should this Court find Tsigaris to be in contempt of this Final Judgment and
22 Permanent Injunction, Tsigaris shall be liable for liquidated damages in the amount of \$500.00
23 for each day that Tsigaris is found to be violation of this Final Judgment and Permanent
24 Injunction. Tsigaris shall also be liable for any attorneys' fees incurred by Plaintiff in any
25 enforcement proceedings brought pursuant to this paragraph (C).

D. This Court shall retain jurisdiction for the purpose of making any further orders necessary and proper for the construction or modification of this Final Judgment and Permanent Injunction, the enforcement thereof, and/or the punishment for any violations thereof.

E. For the purpose of any future proceeding to enforce the terms of this Final Judgment and Permanent Injunction, service by mail upon a party or its counsel of record at their last known address shall be deemed adequate notice for each party.

PURSUANT TO STIPULATION IT IS SO ORDERED this 21day of June, 2011

Susan Illston

The Honorable Susan Illston

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